

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:10-CR-206-BO-2
NO. 5:13-CV-312-BO

RAMON HAISON ETHRIDGE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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ORDER

This matter is before the Court on remand from the Fourth Circuit Court of Appeals for further proceedings consistent with *United States v. Ethridge*, 612 F. App'x 685 (4th Cir. 2015). As petitioner sought a remedy for both perceived flaws in his § 2255 proceeding and raised direct attacks on his conviction and sentence, his motion for correction under Federal Rule of Civil Procedure 60 properly should have been characterized as a mixed Rule 60(b)/§ 2255 motion. *See United States v. McRae*, 793 F.3d 392, 397 (4th Cir. 2015).

As Mr. Ethridge already has filed an unsuccessful § 2255 motion [DE 239], any claims under § 2255 would be subject to the requirements for successive applications; in other words, this Court would lack jurisdiction absent pre-filing authorization from the Fourth Circuit Court of Appeals. 28 U.S.C. § 2255(h). "When [a] motion presents claims subject to the requirements for successive applications as well as claims cognizable under Rule 60(b), the district court should afford the applicant an opportunity to elect between deleting the improper claims or having the entire motion treated as a successive application." *United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003). Accordingly, petitioner is given until **December 31, 2015**, to notify the Court of his intention. If he elects to pursue all the claims, his entire motion will be

treated as a successive application. If he elects to pursue only the claims that attack perceived flaws in his § 2255 proceeding, his motion will be a proper Rule 60(b) motion for the Court to consider on its merits.

SO ORDERED, this the 24 day of November, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE